

AMENDED IN SENATE APRIL 10, 2012

SENATE BILL

No. 1000

Introduced by Senator Yee
(Principal coauthor: Senator Alquist)
(Principal coauthor: Assembly Member Hill)
(Coauthor: Senator Blakeslee)

February 6, 2012

An act to amend ~~Section~~ *Sections 315, 454.5, and 583* of, ~~and to repeal and add Section 583 of,~~ the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 1000, as amended, Yee. Public Utilities Commission: records.

~~Under~~

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. The Public Utilities Act requires the commission to investigate the cause of all accidents occurring upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and authorizes the commission to make any order or recommendation with respect to the investigation that it determines to be just and reasonable.

This bill would require that any order or recommendation made by the commission and any accident report filed with, *or generated by*, the commission pursuant to these requirements be made available and ready

for public review in compliance with the California Public Records Act and these provisions.

(2) *The Public Utilities Act requires the commission to adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, as specified.*

This bill instead would require the commission to adopt appropriate procedures to ensure the confidentiality of any market sensitive information that can be shown to bring upward pressure on prices submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, as specified.

~~The~~

(3) *The Public Utilities Act prohibits the commission or an officer or employee of the commission from disclosing any information furnished to the commission by a public utility, a subsidiary, an affiliate, or corporation holding a controlling interest in a public utility, unless the information is specifically required to be open to public inspection under the act, except on order of the commission or a commissioner in the course of a hearing or proceeding. The act provides that any present or former officer or employee of the commission who divulges this information is guilty of a misdemeanor.*

~~This bill would repeal that prohibition and instead require the California Public Records Act to apply to all records of, and records filed with, the commission unless expressly exempt from disclosure by other provisions of the Public Utilities Code or the California Public Records Act. The bill also would require the commission to immediately conduct a meeting to amend General Order 66 to be consistent with these provisions.~~ *instead require the commission to disclose specified public records. The bill would require the commission, prior to disclosing any record, to determine whether any exemptions to the California Public Records Act or other law restricting disclosure apply to that record. The bill would require the commission to create a list of safety-related reports that the commission would, upon completion of the reports, automatically disclose to the public. The bill would require the commission to post certain information on its Internet Web site. The bill would require the commission to immediately revise its written guidelines, as specified, and modify its existing rules and regulations governing disclosure of public records to provide guidance on the showing necessary to justify a commission decision to withhold*

disclosure of specified categories of public records. The bill would repeal the provision that any present or former officer or employee who divulges nonpublic information is guilty of a misdemeanor.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 315 of the Public Utilities Code is
2 amended to read:

3 315. (a) The commission shall investigate the cause of all
4 accidents occurring within this state upon the property of any
5 public utility or directly or indirectly arising from or connected
6 with its maintenance or operation, resulting in loss of life or injury
7 to person or property and requiring, in the judgment of the
8 commission, investigation by it, and may make any order or
9 recommendation with respect thereto as in its judgment seems just
10 and reasonable. Every public utility shall file with the commission,
11 under rules the commission prescribes, a report of each accident
12 so occurring of the kinds or classes as the commission from time
13 to time designates.

14 (b) Any order or recommendation made by the commission
15 pursuant to this section, and any accident report filed with, *or*
16 *generated by*, the commission pursuant to this section, shall be
17 made available and ready for public review in compliance with
18 the California Public Records Act (Chapter 3.5 (commencing with
19 Section 6250) of Division 7 of Title 1 of the Government Code)
20 *and Section 583*. Neither the order or recommendation of the
21 commission nor any accident report filed with the commission
22 shall be admitted as evidence in any action for damages based on
23 or arising out of the loss of life or injury to person or property.

24 SEC. 2. Section 454.5 of the Public Utilities Code is amended
25 to read:

26 454.5. (a) The commission shall specify the allocation of
27 electricity, including quantity, characteristics, and duration of
28 electricity delivery, that the Department of Water Resources shall
29 provide under its power purchase agreements to the customers of
30 each electrical corporation, which shall be reflected in the electrical
31 corporation's proposed procurement plan. Each electrical
32 corporation shall file a proposed procurement plan with the

1 commission not later than 60 days after the commission specifies
2 the allocation of electricity. The proposed procurement plan shall
3 specify the date that the electrical corporation intends to resume
4 procurement of electricity for its retail customers, consistent with
5 its obligation to serve. After the commission's adoption of a
6 procurement plan, the commission shall allow not less than 60
7 days before the electrical corporation resumes procurement
8 pursuant to this section.

9 (b) An electrical corporation's proposed procurement plan shall
10 include, but not be limited to, all of the following:

11 (1) An assessment of the price risk associated with the electrical
12 corporation's portfolio, including any utility-retained generation,
13 existing power purchase and exchange contracts, and proposed
14 contracts or purchases under which an electrical corporation will
15 procure electricity, electricity demand reductions, and
16 electricity-related products and the remaining open position to be
17 served by spot market transactions.

18 (2) A definition of each electricity product, electricity-related
19 product, and procurement related financial product, including
20 support and justification for the product type and amount to be
21 procured under the plan.

22 (3) The duration of the plan.

23 (4) The duration, timing, and range of quantities of each product
24 to be procured.

25 (5) A competitive procurement process under which the
26 electrical corporation may request bids for procurement-related
27 services, including the format and criteria of that procurement
28 process.

29 (6) An incentive mechanism, if any incentive mechanism is
30 proposed, including the type of transactions to be covered by that
31 mechanism, their respective procurement benchmarks, and other
32 parameters needed to determine the sharing of risks and benefits.

33 (7) The upfront standards and criteria by which the acceptability
34 and eligibility for rate recovery of a proposed procurement
35 transaction will be known by the electrical corporation prior to
36 execution of the transaction. This shall include an expedited
37 approval process for the commission's review of proposed contracts
38 and subsequent approval or rejection thereof. The electrical
39 corporation shall propose alternative procurement choices in the
40 event a contract is rejected.

1 (8) Procedures for updating the procurement plan.

2 (9) A showing that the procurement plan will achieve the
3 following:

4 (A) The electrical corporation, in order to fulfill its unmet
5 resource needs, shall procure resources from eligible renewable
6 energy resources in an amount sufficient to meet its procurement
7 requirements pursuant to the California Renewables Portfolio
8 Standard Program (Article 16 (commencing with Section 399.11)
9 of Chapter 2.3).

10 (B) The electrical corporation shall create or maintain a
11 diversified procurement portfolio consisting of both short-term
12 and long-term electricity and electricity-related and demand
13 reduction products.

14 (C) The electrical corporation shall first meet its unmet resource
15 needs through all available energy efficiency and demand reduction
16 resources that are cost effective, reliable, and feasible.

17 (10) The electrical corporation's risk management policy,
18 strategy, and practices, including specific measures of price
19 stability.

20 (11) A plan to achieve appropriate increases in diversity of
21 ownership and diversity of fuel supply of nonutility electrical
22 generation.

23 (12) A mechanism for recovery of reasonable administrative
24 costs related to procurement in the generation component of rates.

25 (c) The commission shall review and accept, modify, or reject
26 each electrical corporation's procurement plan. The commission's
27 review shall consider each electrical corporation's individual
28 procurement situation, and shall give strong consideration to that
29 situation in determining which one or more of the features set forth
30 in this subdivision shall apply to that electrical corporation. A
31 procurement plan approved by the commission shall contain one
32 or more of the following features, provided that the commission
33 may not approve a feature or mechanism for an electrical
34 corporation if it finds that the feature or mechanism would impair
35 the restoration of an electrical corporation's creditworthiness or
36 would lead to a deterioration of an electrical corporation's
37 creditworthiness:

38 (1) A competitive procurement process under which the
39 electrical corporation may request bids for procurement-related
40 services. The commission shall specify the format of that

1 procurement process, as well as criteria to ensure that the auction
2 process is open and adequately subscribed. Any purchases made
3 in compliance with the commission-authorized process shall be
4 recovered in the generation component of rates.

5 (2) An incentive mechanism that establishes a procurement
6 benchmark or benchmarks and authorizes the electrical corporation
7 to procure from the market, subject to comparing the electrical
8 corporation's performance to the commission-authorized
9 benchmark or benchmarks. The incentive mechanism shall be
10 clear, achievable, and contain quantifiable objectives and standards.
11 The incentive mechanism shall contain balanced risk and reward
12 incentives that limit the risk and reward of an electrical corporation.

13 (3) Upfront achievable standards and criteria by which the
14 acceptability and eligibility for rate recovery of a proposed
15 procurement transaction will be known by the electrical corporation
16 prior to the execution of the bilateral contract for the transaction.
17 The commission shall provide for expedited review and either
18 approve or reject the individual contracts submitted by the electrical
19 corporation to ensure compliance with its procurement plan. To
20 the extent the commission rejects a proposed contract pursuant to
21 this criteria, the commission shall designate alternative procurement
22 choices obtained in the procurement plan that will be recoverable
23 for ratemaking purposes.

24 (d) A procurement plan approved by the commission shall
25 accomplish each of the following objectives:

26 (1) Enable the electrical corporation to fulfill its obligation to
27 serve its customers at just and reasonable rates.

28 (2) Eliminate the need for after-the-fact reasonableness reviews
29 of an electrical corporation's actions in compliance with an
30 approved procurement plan, including resulting electricity
31 procurement contracts, practices, and related expenses. However,
32 the commission may establish a regulatory process to verify and
33 ensure that each contract was administered in accordance with the
34 terms of the contract, and contract disputes that may arise are
35 reasonably resolved.

36 (3) Ensure timely recovery of prospective procurement costs
37 incurred pursuant to an approved procurement plan. The
38 commission shall establish rates based on forecasts of procurement
39 costs adopted by the commission, actual procurement costs
40 incurred, or combination thereof, as determined by the commission.

1 The commission shall establish power procurement balancing
2 accounts to track the differences between recorded revenues and
3 costs incurred pursuant to an approved procurement plan. The
4 commission shall review the power procurement balancing
5 accounts, not less than semiannually, and shall adjust rates or order
6 refunds, as necessary, to promptly amortize a balancing account,
7 according to a schedule determined by the commission. Until
8 January 1, 2006, the commission shall ensure that any
9 overcollection or undercollection in the power procurement
10 balancing account does not exceed 5 percent of the electrical
11 corporation's actual recorded generation revenues for the prior
12 calendar year excluding revenues collected for the Department of
13 Water Resources. The commission shall determine the schedule
14 for amortizing the overcollection or undercollection in the
15 balancing account to ensure that the 5 percent threshold is not
16 exceeded. After January 1, 2006, this adjustment shall occur when
17 deemed appropriate by the commission consistent with the
18 objectives of this section.

19 (4) Moderate the price risk associated with serving its retail
20 customers, including the price risk embedded in its long-term
21 supply contracts, by authorizing an electrical corporation to enter
22 into financial and other electricity-related product contracts.

23 (5) Provide for just and reasonable rates, with an appropriate
24 balancing of price stability and price level in the electrical
25 corporation's procurement plan.

26 (e) The commission shall provide for the periodic review and
27 prospective modification of an electrical corporation's procurement
28 plan.

29 (f) The commission may engage an independent consultant or
30 advisory service to evaluate risk management and strategy. The
31 reasonable costs of any consultant or advisory service is a
32 reimbursable expense and eligible for funding pursuant to Section
33 631.

34 (g) The commission shall adopt appropriate procedures to ensure
35 the confidentiality of any market sensitive information *that can*
36 *be shown to bring upward pressure on prices* submitted in an
37 electrical corporation's proposed procurement plan or resulting
38 from or related to its approved procurement plan, including, but
39 not limited to, proposed or executed power purchase agreements,
40 data request responses, or consultant reports, or any combination,

1 provided that the Office of Ratepayer Advocates and other
2 consumer groups that are nonmarket participants shall be provided
3 access to this information under confidentiality procedures
4 authorized by the commission.

5 (h) Nothing in this section alters, modifies, or amends the
6 commission's oversight of affiliate transactions under its rules and
7 decisions or the commission's existing authority to investigate and
8 penalize an electrical corporation's alleged fraudulent activities,
9 or to disallow costs incurred as a result of gross incompetence,
10 fraud, abuse, or similar grounds. Nothing in this section expands,
11 modifies, or limits the State Energy Resources Conservation and
12 Development Commission's existing authority and responsibilities
13 as set forth in Sections 25216, 25216.5, and 25323 of the Public
14 Resources Code.

15 (i) An electrical corporation that serves less than 500,000 electric
16 retail customers within the state may file with the commission a
17 request for exemption from this section, which the commission
18 shall grant upon a showing of good cause.

19 (j) (1) Prior to its approval pursuant to Section 851 of any
20 divestiture of generation assets owned by an electrical corporation
21 on or after the date of enactment of the act adding this section, the
22 commission shall determine the impact of the proposed divestiture
23 on the electrical corporation's procurement rates and shall approve
24 a divestiture only to the extent it finds, taking into account the
25 effect of the divestiture on procurement rates, that the divestiture
26 is in the public interest and will result in net ratepayer benefits.

27 (2) Any electrical corporation's procurement necessitated as a
28 result of the divestiture of generation assets on or after the effective
29 date of the act adding this subdivision shall be subject to the
30 mechanisms and procedures set forth in this section only if its
31 actual cost is less than the recent historical cost of the divested
32 generation assets.

33 (3) Notwithstanding paragraph (2), the commission may deem
34 proposed procurement eligible to use the procedures in this section
35 upon its approval of asset divestiture pursuant to Section 851.

36 *SEC. 3. Section 583 of the Public Utilities Code is amended*
37 *to read:*

38 583. (a) No information furnished to the commission by a
39 public utility, or any business ~~which~~ *that* is a subsidiary or affiliate
40 of a public utility, or a corporation ~~which~~ *that* holds a controlling

1 interest in a public utility, except those matters specifically required
2 to be open to public inspection by this part, shall be open to public
3 inspection or made public except on order of the commission, or
4 by the commission or a commissioner in the course of a hearing
5 or proceeding. ~~Any present or former officer or employee of the~~
6 ~~commission who divulges any such information is guilty of a~~
7 ~~misdemeanor.~~

8 (b) Subdivision (a) shall not apply to any of the following public
9 records:

10 (1) Records of completed and routine safety-related
11 investigations, inspections, and audits made by the commission.
12 These records shall include all communications included in
13 completed and routine safety-related investigations, inspections,
14 and audits.

15 (2) Reports of gas incidents required by federal regulations and
16 commission rules.

17 (3) Quarterly summary reports summarizing all commission
18 reportable and nonreportable gas-leak-related incidents submitted
19 to the commission.

20 (4) Annual safety reports required pursuant to federal
21 regulations and the commission.

22 (5) Pipeline strength testing failure reports required pursuant
23 to federal regulations and the commission.

24 (6) Change in Maximum Allowable Operating Pressure reports
25 required by General Order 112-E.

26 (7) Mobilehome park annual reports, inspection reports, and
27 citation records related to the commission's enforcement of federal
28 pipeline safety standards for mobilehome park operators.

29 (8) Propane operator annual reports, inspection reports, and
30 citation records related to the commission's enforcement of federal
31 pipeline safety standards for propane operators.

32 (9) Applications submitted to the commission by railroads
33 proposing changes to rail crossings.

34 (c) Notwithstanding subdivision (a), the commission may
35 disclose a record when on the facts of a particular case the public
36 interest served by disclosing the record clearly outweighs the
37 public interest served by nondisclosure of the record.

38 (d) Prior to disclosing any record, the commission shall
39 determine whether any exemption to the California Public Records
40 Act (Chapter 3.5 (commencing with Section 6250) of Division 7

1 of Title 1 of the Government Code) or other law restricting
2 disclosure applies to that record.

3 (e) The commission shall create a list of safety-related reports
4 that the commission will, upon completion of the reports,
5 automatically disclose to the public.

6 (f) On the commission's Internet Web site, the commission
7 shall do all of the following:

8 (1) Create and maintain a comprehensive index of the
9 commission's records that explains whether and how the public
10 can access the commission's records.

11 (2) Create and maintain a database that details the requests
12 the commission has received to treat documents as confidential
13 and the commission's decisions regarding these requests.

14 (3) Routinely post the safety-related reports that the commission
15 determines are subject to disclosure.

16 (4) Provide a description of the commission's safety jurisdiction,
17 inspection, investigation, and enforcement activities.

18 (g) To ensure compliance with the California Public Records
19 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
20 of Title 1 of the Government Code), the commission shall, as
21 appropriate, redact a publicly released document.

22 (h) The commission shall immediately revise its written
23 guidelines adopted pursuant to Section 6253.4 of the Government
24 Code and shall modify its existing rules and regulations governing
25 the disclosure of public records to provide guidance on the showing
26 necessary to justify a commission decision to withhold disclosure
27 of the categories of public records defined in the California Public
28 Records Act (Chapter 3.5 (commencing with Section 6250) of
29 Division 7 of Title 1 of the Government Code).

30 ~~SEC. 2. Section 583 of the Public Utilities Code is repealed.~~

31 ~~SEC. 3. Section 583 is added to the Public Utilities Code, to~~
32 ~~read:~~

33 ~~583 (a) The California Public Records Act (Chapter 3.5~~
34 ~~(commencing with Section 6250) of Division 7 of Title 1 of the~~
35 ~~Government Code) shall apply to all records of, and records filed~~
36 ~~with, the commission unless expressly exempt from disclosure by~~
37 ~~this code or the California Public Records Act.~~

38 ~~(b)~~

- 1 ~~The commission shall immediately conduct a hearing to amend~~
- 2 ~~General Order 66 to be consistent with this section.~~

O